Supreme Court, U.S.
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No. 00-1535

In The

Supreme Court of the United States

AMERICAN MEDICAL SECURITY, INC.,

Petitioner,

v.

AAA MICHIGAN,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF IN OPPOSITION

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STATEMENT PURSUANT TO RULE 29.6

Petitioner has consistently styled Respondent as "AAA Michigan". The opinions of the United States Court of Appeals for the Sixth Circuit and the United States District Court for the Eastern District of Michigan refer to Respondent as "Auto Club Insurance Association of Michigan".

Although insurance premiums are paid to "AAA Michigan", the legal name of "AAA Michigan" is "Auto Club of Michigan". The "Auto Club of Michigan" is a wholly-owned subsidiary of the "Auto Club Group". The "Auto Club Group" is a non-profit Michigan corporation owned by its individual members.

The "Auto Club Insurance Association of Michigan" is a reciprocal inter-insurance exchange organized under Michigan law.

TABLE OF CONTENTS

Page

Statement Pursuant to Rule 29.6 i

Supplement to Jurisdictional Statement 1

Statutory Provisions Involved 1

Supplement to Statement of the Case 3

Reasons for Denying the Writ 4

I. Consideration of the Question Presented by the Petition for a Writ of Certiorari is Inappropriate in Light of the Record in this Case 4

A. Prior to any Consideration of the Question Presented, this Court Would Have to Make a Determination as to Whether Subject-Matter Jurisdiction Exists Thereon 5

B. In Order to Reach the Question Presented, this Court Would Have to Resolve the Statute of Limitations Question in Favor of Petitioner 7

1. Coan and Williamson – Sixth Circuit Court No. 98-1973 7

2. Teagan – Sixth Circuit Case No. 99-2110 8

C. Any Decision by this Court as to the Question Presented Will not be Dispositive due to Language in the UWL Insurance Policies that Comprise the ERISA Plans at Issue, in Total 9

1. "Order of Benefit Determination" Language 9

2. "Conformity With State Statutes" Language 11

TABLE OF CONTENTS – Continued

Page

II. Both the District Court and the Sixth Circuit Utilized the Procedure Outlined by this Court in *UNUM Life Insurance Co. v. Ward* in Determining that § 3109a of the Michigan No-Fault Act is Applicable to the UWL Policies at Issue in this Case by Virtue of ERISA's "Saving" Clause ... 12

III. The Question of Whether § 3109a of the Michigan No-Fault Act is Preempted by ERISA or Saved from Preemption by ERISA's "Saving" Clause Does not Present an Issue of Sufficient Importance to Warrant Relief by this Court ... 16

Conclusion 18

TABLE OF AUTHORITIES

Page

CASES

Advance Watch Co., Ltd. v. Kemper National Insurance Co., 99 F.3d 795 (6th Cir.1996)..... 11

Alexander v. Electronic Data Systems Corp., 13 F.3d 940 (6th Cir.1994)..... 6

American Medical Security, Inc. v. Bartlett, 111 F.3d 358 (4th Cir.1997)..... 15

Auto Club Insurance Association v. Frederick & Herrud, Inc., 443 Mich. 358, 505 N.W.2d 820 (1993) 10

Auto Club Insurance Association v. Health and Welfare Plans, 961 F.2d 588 (6th Cir.1992) 14

Auto Club Insurance Association v. Safeco Life Insurance Co., 833 F.Supp. 637 (W.D. Mich.1993)..... 15

Boyer v. Douglas Components Corp., 986 F.2d 999 (6th Cir.1993)..... 11

Brown v. Granatelli, 897 F.2d 1351 (5th Cir.1990) 15

Federal Kemper Insurance Co., Inc. v. Health Insurance Administration, Inc., 424 Mich. 537, 383 N.W.2d 590 (1986)..... 10

FMC Corp. v. Holliday, 498 U.S. 52, 111 S.Ct. 403, 112 L.Ed.2d 356 (1990)..... 14

Ford Motor Credit Co. v. Aetna Casualty and Surety Co., 717 F.2d 959 (6th Cir.1983) 11

Freytag v. Commissioner of Internal Revenue, 501 U.S. 868, 111 S.Ct. 2631, 115 L.Ed.2d 764 (1991) 5

G.R. Herberger's, Inc. v. Erickson, 17 F.Supp.2d 932 (D. Minn.1998) 15

TABLE OF AUTHORITIES – Continued

Page

Harvey v. Machigonne Benefits Administrators, 122 F.Supp.2d 179 (D. Me.2000) 15

Insurance Corporation of Ireland, Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 102 S.Ct. 2099, 72 L.Ed.2d 492 (1982) 5

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO v. Hoosier Cardinal Corporation, 383 U.S. 696, 86 S.Ct. 1107, 16 L.Ed.2d 192 (1966) 7

Lincoln Mutual Casualty Co. v. Lectron Products, Inc., Employee Health Benefit Plan, 970 F.2d 206 (6th Cir.1992) 14, 15

McGurl v. Trucking Employees of North Jersey Welfare Fund, Inc., 124 F.3d 471 (3rd Cir.1997) 17

Michigan Affiliated Healthcare System, Inc. v. CC Systems Corporation of Michigan, 139 F.3d 546 (6th Cir.1998) 6

Moore v. Provident Life and Accident Insurance Co., 786 F.2d 922 (9th Cir.1986) 15

Mt. Healthy City School District Board of Education v. Doyle, 429 U.S. 274, 97 S.Ct. 568, 50 L.Ed.2d 471 (1977) 5

North American Specialty Insurance Co. v. Myers, 111 F.3d 1273 (6th Cir.1997) 11

Northern Group Services, Inc. v. Auto Owners Insurance Co., 833 F.2d 85 (6th Cir.1987) 13, 14

O'Neal v. Kennamer, 958 F.2d 1044 (11th Cir.1992) 6

PM Group Life Insurance Co. v. Western Growers Assurance Trust, 953 F.2d 543 (9th Cir.1992) 17

TABLE OF AUTHORITIES – Continued

Page

Provident Life & Accident Insurance Company v. Waller, 906 F.2d 985 (4th Cir.), *cert. denied*, 498 U.S. 982, 111 S.Ct. 512, 112 L.Ed.2d 524 (1990) 6

Regents of the University of Michigan v. Agency Rent-A-Car, 122 F.3d 336 (6th Cir.1997) 11

Reynolds Metals Co. v. Ellis, 202 F.3d 1246 (9th Cir.), *cert. granted*, 121 S.Ct. 562, 148 L.Ed.2d 482, *cert. dismissed*, 121 S.Ct. 674, 148 L.Ed.2d 674 (2000) 6

Schlesinger v. Councilman, 420 U.S. 738, 95 S.Ct. 1300, 43 L.Ed.2d 591 (1975) 6

United Food & Commercial Workers & Employers Arizona Health & Welfare Trust v. Pacyga, 801 F.2d 1157 (9th Cir.1986) 15

UNUM Life Insurance Co. v. Ward, 526 U.S. 358, 119 S. Ct. 1380, 143 L.Ed.2d 462 (1999) ... 4, 12, 13, 14, 16

Winstead v. Indiana Insurance Co., 855 F.2d 430 (7th Cir.1988) 17

Wolfe v. Marsh, 846 F.2d 782, 269 U.S.App.D.C. 394 (1988) 6

STATUTES

29 U.S.C. § 1002 2

29 U.S.C. § 1002 (7) 1

29 U.S.C. § 1002 (8) 1

29 U.S.C. § 1132 1

29 U.S.C. § 1132 (a)(1)(B) 1, 5

29 U.S.C. § 1132 (a)(3) 1, 6

TABLE OF AUTHORITIES – Continued

Page

29 U.S.C. § 1132 (a)(3)(B) 6

29 U.S.C. § 1144 (b)(2)(A) 4, 12

M.C.L. 500.3109a; M.S.A. 24.13109(1) 4, 12, 13, 16

M.C.L. 500.3145(1); M.S.A. 24.13145(1) 7

McCarran Ferguson Act, 15 U.S.C. § 1011 *et seq.* 13

Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 891 ..... *passim*

SUPPLEMENT TO JURISDICTIONAL STATEMENT

Petitioner states unequivocally that the basis for the underlying lawsuits was "§ 502(a) of the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 891, as amended, 29 U.S.C. § 1132 (a)(1)(B)". Pet. at 1. Subsequently, Petitioner acknowledges that it "is a third-party administrator of insured employee welfare benefit plans governed by ERISA". Pet. at 3. By definition, Petitioner is neither a participant nor beneficiary of the Plans at issue. 29 U.S.C. § 1002 (7), (8).

STATUTORY PROVISIONS INVOLVED

Standing and subject-matter jurisdiction to bring a civil action under ERISA is conferred by 29 U.S.C. § 1132. Petitioner brought the two lawsuits involved here pursuant to 29 U.S.C. § 1132 (a)(1)(B):

"A civil action may be brought –

"(1) by a participant or beneficiary –"

* * *

"**(B)** to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;"

29 U.S.C. § 1132 (a)(3) provides that:

"A civil action may be brought –

"(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the

terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan;"

29 U.S.C. § 1002 defines "participant", "beneficiary" and "fiduciary":

"(7) The term 'participant' means any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer or members of such organization, or whose beneficiaries may be eligible to receive any such benefit.

"(8) The term 'beneficiary' means a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to benefits thereunder".

* * *

"(21)(A) Except as otherwise provided in subparagraph (B), a person is a fiduciary with respect to a plan to the extent (i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) he has any discretionary authority or discretionary responsibility in the administration of

such plan. Such terms includes any person designated under section 1105(c)(1)(B) of this title."

SUPPLEMENT TO STATEMENT OF THE CASE

In Petitioner's Statement of the Case, Petitioner refers to the existence of "ERISA plans administered by AMS", but does not explain what comprises those plans. Pet. at 3. The ERISA plans covering Mr. Coan, Mr. Williamson, and Ms. Teagan (through her mother, Lillian Tull) consist wholly of insurance policies purchased by the employers of Mr. Coan, Mr. Williamson and Ms. Tull and issued by United Wisconsin Life Insurance Company ("UWL").

The policies provide that Petitioner, American Medical Security Inc, ("AMS") is the Trust Administrator. The Terms and Conditions include the following acknowledgment by the Employer that purchased the policy:

> "The Employer understands and agrees that the Trustee or the Trust Administrator are not the insurer. * * * The principal duty of the Trust Administrator is to administer and manage the insurance programs for the Trustee and for Employers who participate in the Trust. The insurance, **payment or denial of claims for benefits** under the policies and all other particulars are the **sole obligation of** and will be fulfilled by **the insurer** according to the terms of the insurance policies and according to the standard operating procedures of the insurer or its authorized representative."

(Emphasis added).

REASONS FOR DENYING THE WRIT

There exist three independent reasons for denying Petitioner's request for the issuance of a writ of certiorari. Consideration of the Question Presented is inappropriate in light of the record in this case. Both the Sixth Circuit and the District Court utilized the procedure outlined by this Court in *UNUM Life Insurance Co. v. Ward*, 526 U.S. 358, 119 S. Ct. 1380, 143 L.Ed.2d 462 (1999), in determining that § 3109a of the Michigan No-Fault Act, M.C.L. 500.3109a; M.S.A. 24.13109(1), is applicable to the UWL policies at issue in this case by virtue of ERISA's "saving" clause, 29 U.S.C. § 1144(b)(2)(A). In any event, the question of whether § 3109a of the Michigan No-Fault Act is preempted by ERISA or saved from preemption by ERISA's "saving" clause does not present an issue of sufficient importance to warrant review by this Court.

I. Consideration of the Question Presented by the Petition for a Writ of Certiorari is Inappropriate in Light of the Record in this Case.

Consideration of the Question Presented by Petitioner is inappropriate when viewed in the context of the entire record in this matter. First, prior to any such consideration, this Court would have to make a determination as to subject-matter jurisdiction. Second, in order to reach the Question Presented, this Court would have to resolve the statute of limitations question in favor of Petitioner. Third, any decision by this Court as to the Question Presented will not be dispositive in this case due to the language of the UWL insurance policies themselves.

A. Prior to any Consideration of the Question Presented, this Court Would Have to Make a Determination as to Whether Subject-Matter Jurisdiction Exists Thereon.

Petitioner brought these actions pursuant to 29 U.S.C. § 1132 (a)(1)(B). Pet. at 1. 29 U.S.C. § 1132 (a)(1)(B) states that a civil action may be brought "by a participant or beneficiary * * * to recover benefit due to him under the terms of the plan, to enforce his rights under the terms of the plan, or clarify his rights to future benefits under the terms of the plan". Petitioner does not claim that it is a "participant" or "beneficiary" of the ERISA plans at issue. Indeed, Petitioner acknowledges that it "is a third-party administrator of insured employee welfare benefit plans governed by ERISA". Pet. at 3. On its face, a jurisdictional question is presented thereby.

Respondent acknowledges that no challenge to subject-matter jurisdiction was raised in either lower court. Respondent accepts full responsibility for that omission. Nonetheless, this Court has observed that it must first satisfy itself of subject-matter jurisdiction, even *sua sponte*, before reaching the merits of a dispute. *Freytag v. Commissioner of Internal Revenue*, 501 U.S. 868, 896, 111 S.Ct. 2631, 2648, 115 L.Ed.2d 764 (1991); *Insurance Corporation of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702, 102 S.Ct. 2099, 2104, 72 L.Ed.2d 492 (1982). See *Mt. Healthy City School District Board of Education v. Doyle*, 429 U.S. 274, 278, 97 S.Ct. 568, 571-572, 50 L.Ed.2d 471 (1977).

Both the Fourth and Sixth Circuits have held that a plan administrator cannot bring a cause of action pursuant to 29 U.S.C. § 1132 (a)(1)(B). *Alexander v. Electronic Data Systems Corp.*, 13 F.3d 940, 946 (6th Cir.1994); *Provident Life & Accident Insurance Company v. Waller*, 906 F.2d 985, 987-988 (4th Cir.), *cert. denied*, 498 U.S. 982, 111 S.Ct. 512, 112 L.Ed.2d 524 (1990). Adoption of the holdings in those cases would bar Petitioner's claims as presented on jurisdictional grounds.[1]

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[1] It is true that federal courts may excuse pleading defects if the facts alleged in the Complaint and the requested relief demonstrate the existence of a substantial federal question. *Schlesinger v. Councilman*, 420 U.S. 738, 742-743, 95 S.Ct. 1300, 1305-1306, 43 L.Ed.2d 591 (1975); *Wolfe v. Marsh*, 846 F.2d 782, 785, 269 U.S.App.D.C., 394, 397 (1988). Traveling down that hitherto-unbriefed road would, however, require that this Court confront further related jurisdictional questions before reaching the Question Presented. *Cf., O'Neal v. Kennamer*, 958 F.2d 1044, 1048 (11th Cir.1992). First, can Petitioner be considered a "fiduciary" for purposes of bringing these cases under the umbrella of 29 U.S.C. § 1132 (a)(3)? Because it is UWL, and not Petitioner, that has the sole responsibility and obligation for the payment or denial of claims, for the particular allegations of the Complaints at issue Petitioner should not be considered to be a "fiduciary" for bringing lawsuits pursuant to 29 U.S.C. § 1132 (a)(3)(B). *Michigan Affiliated Healthcare System, Inc. v. CC Systems Corporation of Michigan*, 139 F.3d 546, 548-549 (6th Cir.1998). Second, even if Petitioner were considered a "fiduciary", does the relief sought by these cases fall within the purview of 29 U.S.C. § 1132 (a)(3)? The Complaints in these cases seek "reimbursement from Defendant * * * for benefits which Plaintiff paid on behalf of Defendant's insured". Monetary damages are sought. On its face, such a claim does not appear to sound in equity. It is noteworthy that this Court recently evinced some interest in that question – albeit on a different set of facts. *Reynolds Metals Co. v. Ellis*, 202 F.3d 1246, 1248 (9th Cir.),

B. In Order to Reach the Question Presented, this Court Would Have to Resolve the Statute of Limitations Question in Favor of Petitioner.

In each of the underlying cases, Respondent argued that Petitioner's Complaint was barred by application of the "one-year-back" rule set forth in M.C.L. § 500.3145(1); M.S.A. § 24.13145(1). As to Petitioner's lawsuit regarding payments made on behalf of Messrs. Coan and Williamson, both the District Court and the Sixth Circuit ruled in favor of Respondent. (Sixth Circuit Case No. 98-1973). The District Court and Sixth Circuit did not decide this question in Petitioner's lawsuit regarding payments made on behalf of Ms. Teagan. (Sixth Circuit Case No. 99-2110). To reach the Question Presented, at a minimum, this Court must reverse the Sixth Circuit's ruling as to Messrs. Coan and Williamson. (As to the lawsuit involving Ms. Teagan, its failure to be timely filed provided an alternative ground to affirm the District Court.)

1. Coan and Williamson – Sixth Circuit Case No. 98-1973

In ruling in favor of Respondent in the lawsuit seeking reimbursement of payments made on behalf of Messrs. Coan and Williamson, the District Court and Sixth Circuit followed guidelines established by this Court. In *International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW),*

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cert. granted, 121 S.Ct. 562, 148 L.Ed.2d 482, *cert. dismissed*, 121 S.Ct. 674, 148 L.Ed.2d 674 (2000).

AFL-CIO v. Hoosier Cardinal Corporation, 383 U.S. 696, 704-705, 86 S.Ct. 1107, 1113, 16 L.Ed.2d 192 (1966), this Court held that the timeliness of a federal lawsuit, where the statutory basis for such a lawsuit does not contain a period of limitation, "is to be determined, as a matter of federal law, by reference to the appropriate state statute of limitations".

Both the District Court, Pet. App. C, 42a-44a, and the Sixth Circuit, Pet. App. A, 14a-18a, determined which of the ostensibly competing statutes of limitations was most appropriate, agreeing with Respondent. Although Petitioner does not raise this argument to this Court, in the lower courts Petitioner argued that another Michigan statute of limitations was most appropriate. Resolution of this issue, therefore, depends solely on an analysis of Michigan state law, an insufficiently important enough basis on which to grant a petition for a writ of certiorari.

2. Teagan – Sixth Circuit Case No. 99-2110

Respondent emphasizes that the District Court and Sixth Circuit did not affirmatively rule in favor of Petitioner as to the timeliness of the lawsuit. Instead, those courts simply ignored the question. Thus, for this Court to reach a contrary conclusion as to the Question Presented, this Court must initially determine the statute of limitations question in favor of Petitioner.

Application of the analysis utilized by the District Court and Sixth Circuit in the lawsuit regarding Messrs. Coan and Williamson – unchallenged in the Petition – establishes that, had either court squarely considered this

question in the lawsuit regarding Ms. Teagan, it should have ruled in favor of Respondent and against Petitioner, thereby obviating any need to reach the Question Presented. Here again, resolution of this issue depends solely on an analysis of Michigan state law.

C. Any Decision by this Court as to the Question Presented Will not be Dispositive due to Language in the UWL Insurance Policies that Comprise the ERISA Plans at Issue, in Total.

Even were Petitioner to prevail on the Question Presented, so that the language of the UWL policies were controlling in these cases, application of the policy language would still render Petitioner primarily liable for the payment of the medical expenses at issue, leaving the parties in precisely the same position as at present. Two separate provisions of the UWL policies compel this result. In any event, to resolve this issue, it would be necessary for this Court to delve into the minutiae of a single insurance policy, clearly an insufficiently important basis on which to grant a petition for a writ of certiorari.

1. "Order of Benefit Determination" Language

As applied to Messrs. Coan and Williamson, the UWL Order of Benefit Determination provision specifies that where the UWL coordination provisions do not agree with the coordination provisions of the other plan at issue (here, valid Michigan no-fault automobile insurance policies), the UWL policy will waive its rules and coordinate benefits according to the other plan. In other words,

pursuant to the terms of the UWL policy, the no-fault coordination provisions would apply, making Petitioner primarily liable for the payment of the medical expenses at issue. *Federal Kemper Insurance Co., Inc. v. Health Insurance Administration, Inc.*, 424 Mich. 537, 383 N.W.2d 590 (1986), *overruled as to self-funded ERISA plans by Auto Club Insurance Association v. Frederick & Herrud, Inc.*, 443 Mich. 358, 505 N.W.2d 820 (1993).

As applied to Ms. Teagan, the UWL Order of Benefit Determination specifies that the UWL policy is primary because Ms. Teagan's mother (Ms. Teagan was a dependent of her mother at the time of the accident) was covered by the UWL policy prior to being insured with Respondent.

In neither case, then, would the Judgment of the Sixth Circuit be altered. Pet. App. A, 27a.

Petitioner relies on other language in the UWL policy. Pet. at 3. However, the language relied upon by Petitioner (the Excess Coverage provision) is in irreconcilable conflict with the Order of Benefit Determination provision.[2] Pursuant to well-established rules of policy interpretation, the Order of Benefit Determination provision must

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[2] Read literally, as suggested by Petitioner below, the Excess Coverage provision obviates the need for any Coordination of Benefits provision because whenever "there is other insurance providing medical payments or medical expense coverage", "[n]o benefits are payable for injury or Sickness".

be construed in favor of Respondent's suggested construction and against that of Petitioner below.[3]

2. "Conformity With State Statutes" Language

In the "General Provisions" section of the UWL policies at issue, there exists a provision entitled "Conformity With State Statutes":

> "If a Policy provision does not conform to applicable provisions of State law, the Policy is hereby amended to comply with such law."

Petitioner's suggested construction of the Order of Benefit Determination provision and the Excess Coverage

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[3] Petitioner's suggested interpretation of the Excess Coverage language in the UWL policy violates the rule of policy interpretation in Michigan requiring that meaning be given to all terms therein. *E.g., North American Specialty Insurance Co. v. Myers,* 111 F.3d 1273 (6th Cir.1997) (interpreting Michigan law); *Advance Watch Co., Ltd. v. Kemper National Insurance Co.,* 99 F.3d 795 (6th Cir.1996) (interpreting Michigan law).

Furthermore, the language of the Excess Coverage provision of the UWL policy, when juxtaposed against the language of the Order of Benefit Determination language in the **same** policy, creates a material ambiguity as to the scope of the Order of Benefit Determination language involving the definition of "Plan". Following the universally-accepted rule of *contra proferentum,* that a material ambiguity in an insurance policy must be construed against the drafter, the Order of Benefit Determination language is to be construed so as to place primary responsibility for the payment of medical expenses on Petitioner. *Regents of the University of Michigan v. Agency Rent-A-Car,* 122 F.3d 336, 339-340 (6th Cir.1997), citing *Ford Motor Credit Co. v. Aetna Casualty and Surety Co.,* 717 F.2d 959, 961 (6th Cir.1983). *See Boyer v. Douglas Components Corp.,* 986 F.2d 999, 1005 (6th Cir.1993).

provision of the UWL policies does not conform to § 3109a of the Michigan No-Fault Act as interpreted by the Michigan Supreme Court in *Federal Kemper, supra.* Pursuant to the Conformity with State Statutes provision, the UWL policies at issue are "hereby amended to comply with such law". Thus, regardless of any other arguments proffered by Petitioner, in the end, even if the language of the UWL policies are controlling as to the relative obligations of the parties herein, that language requires that Petitioner assume primary liability for the payment of the medical expenses at issue.

II. Both the District Court and the Sixth Circuit Utilized the Procedure Outlined by this Court in *UNUM Life Insurance Co. v. Ward* in Determining that § 3109a of the Michigan No-Fault Act is Applicable to the UWL Policies at Issue in this Case by Virtue of ERISA's "Saving" Clause.

As a substantive matter, Petitioner contends that the Sixth Circuit's opinion "devotes most of its ERISA preemption analysis to whether the deemer clause overrides the savings clause when a self-funded plan is not at issue. (Apx. A, pgs. 22a-25a)". Pet. at 9-10. By focusing on those pages of the Sixth Circuit's opinion, Petitioner misapprehends the gravamen of the Sixth Circuit's analysis. In the pages immediately preceding that portion of the Sixth Circuit's opinion assailed by Petitioner, the Sixth Circuit was careful to utilize the procedure outlined by this Court in *UNUM Life Insurance Co. v. Ward, supra,* to determine whether § 3109a of the Michigan No-Fault Act was "saved" from ERISA preemption by virtue of ERISA's "saving" clause. 29 U.S.C. § 1144(b)(2)(A).

The Sixth Circuit began its analysis by observing that § 3109a fell within the purview of ERISA's preemption clause; accordingly, the next step was to determine whether it was "saved" from preemption. Pet. App A, 20a-21a. The Sixth Circuit continued:

> "This determination is made by first asking whether, from a common sense view of the matter, the provision at issue regulates insurance. *See Unum Life Ins. Co. v. Ward*, 526 U.S. 358, 367 (1999). If so, we are to consider three factors to determine whether § 3109a can be considered within the 'business of insurance' as the term is used in the McCarran Ferguson Act, 15 U.S.C. § 1011 *et seq. See id.* This three-factor inquiry involves 1) whether the practice has the effect of transferring or spreading a policy holder's risk; 2) whether the practice is an integral part of the policy relationship between the insurer and the insured; and 3) whether the practice is limited to entities within the insurance industry. *See id.* However, the Supreme Court has qualified this three-factor inquiry, finding that a state regulation need not satisfy all three McCarran Ferguson factors in order to regulate insurance under ERISA's savings clause. *See id.* at 373."

Pet. App. A, 21a.

The Sixth Circuit then utilized that procedure in determining that § 3109a of the Michigan No-Fault Act was, indeed, "saved" from ERISA preemption. Pet. App. A, 21a-22a. The brevity of its analysis was prompted not by a misapprehension of the appropriate legal standards but by the fact that the Sixth Circuit had previously found that § 3109a was "saved" from ERISA preemption. *Northern Group Services, Inc. v. Auto Owners Insurance Co.*,

833 F.2d 85, 89-90 (6th Cir.1987). Indeed, a particularly noteworthy facet of the Sixth Circuit's analysis in *Northern Group Services* is that it followed the procedure outlined by this Court some years later in *UNUM Life Insurance Co. v. Ward, supra.*

The ensuing discussion – the portion of the opinion attacked by Petitioner – appears simply to respond to Petitioner's argument below that *Northern Group Services* has been totally overruled by subsequent case law. Pet. App A, 22a-23a. In fact, *Northern Group Services* was partly overruled, as to self-funded plans **only**, by *FMC Corp. v. Holliday*, 498 U.S. 52, 111 S.Ct. 403, 112 L.Ed.2d 356 (1990).[4] *Auto Club Insurance Association v. Health and Welfare Plans*, 961 F.2d 588, 593 (6th Cir.1992). Accordingly, the Sixth Circuit could, and did, rely on the rationale of *Northern Group Services* as applied to ERISA plans funded through insurance.

In similar measure, the Sixth Circuit's discussion of its opinion in *Lincoln Mutual Casualty Co. v. Lectron Products, Inc., Employee Health Benefit Plan*, 970 F.2d 206 (6th

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[4] Petitioner argues that § 3109a constitutes "direct" regulation of the ERISA plans at issue and, therefore, is not "saved" from ERISA preemption, because "the state priority rule does not merely regulate the conduct or policies of insurance companies, rather, the state priority rule purports to regulate the terms of all health coverage plans, irrespective of whether the plans are funded through insurance". Pet. at 18. Petitioner's formulation would obviate the need for the "deemer" clause because a state statute would not be "saved" if it reached ERISA plans not funded through insurance. Petitioner's argument appears to misapprehend the distinction that this Court made in *FMC Corp.* between direct and indirect regulation of ERISA plans. *Id.*, 498 U.S. at 61, 111 S.Ct. at 409.

Cir.1992), was in specific response to Petitioner's contention that the *Lincoln Mutual* holding should be read as including insured plans as well as self-insured plans.[5] Pet. App. A, 23a-24a. Petitioner's contention, however, ignores the fact that the argument that the ERISA plan in *Lincoln Mutual* was partly insured was based on the fact that "the employer had purchased stop-loss catastrophic claims coverage for claims above $75,000". Pet. at 25. It is well-settled that the purchase of "stop-loss" insurance does not transform a self-insured plan into an "insured plan". *American Medical Security, Inc. v. Bartlett,* 111 F.3d 358, 361 (4th Cir.1997) (citing other Fourth Circuit cases); *United Food & Commercial Workers & Employers Arizona Health & Welfare Trust v. Pacyga,* 801 F.2d 1157, 1161, 1162 (9th Cir.1986); *Moore v. Provident Life and Accident Insurance Co.,* 786 F.2d 922 (9th Cir.1986). *See Brown v. Granatelli,* 897 F.2d 1351, 1354 (5th Cir.1990).[6]

When the Sixth Circuit's analysis is viewed as a whole, Petitioner's substantive argument is nothing more than a claim that the Sixth Circuit "got it wrong". In fact, the weight of case law compels the opposite conclusion. But even if the Sixth Circuit had "gotten it wrong", that

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[5] The Sixth Circuit observed that various District Courts within the Circuit have interpreted *Lincoln Mutual* similarly to its reading of *Lincoln Mutual* in this case. Pet. App A., 24a-25a.

[6] District Courts even cite to *Lincoln Mutual* for that specific proposition. *E.g., Harvey v. Machigonne Benefits Administrators,* 122 F.Supp.2d 179, 185 (D. Me.2000); *G.R. Herberger's, Inc. v. Erickson,* 17 F.Supp.2d 932, 935 (D. Minn.1998); *Auto Club Insurance Association v. Safeco Life Insurance Co.,* 833 F.Supp. 637 (W.D. Mich.1993).

fact, of itself, is an insufficient basis on which to grant a petition for a writ of certiorari.

III. The Question of Whether § 3109a of the Michigan No-Fault Act is Preempted by ERISA or Saved from Preemption by ERISA's "Saving" Clause Does not Present an Issue of Sufficient Importance to Warrant Relief by this Court.

Petitioner argues that its Petition should be granted because the Sixth Circuit impermissibly broadened the scope of ERISA's "saving" clause. Pet. at 8. Indulging Petitioner's argument does not, of itself, warrant review by this Court.

With the issuance of *UNUM Life Insurance Co. v. Ward, supra,* this Court has mandated a two-step procedure for determining whether a state statute is to be "saved" from ERISA preemption. The procedure cannot be undertaken in the abstract; a court must apply the *UNUM Life* standards to a given state statute. By definition, then, the ultimate determination of whether a state statute is to be "saved" from ERISA preemption must be made on a statute-by-statute basis.

The language of state statutes, except for Uniform Acts, are rarely identical – even when dealing with the same subject-matter. Accordingly, the language of one state's statute may dictate one result. The language of another state's statute may require the opposite result. It is, therefore, more accurate to assess the impact of the Sixth Circuit's decision on federal ERISA jurisprudence in light of the number of cases wherein a Circuit or District

Court has been required to decide whether a state coordination of benefits statute was preempted by ERISA or "saved" from ERISA preemption.

Although the very nature of legal research warrants caution, it would appear that this phenomenon is, for all intents and purposes, confined to the Sixth Circuit.[7] At least two other circuits have issued opinions in cases wherein coordination of benefit provisions in ERISA plans were at issue. Neither case, however, had occasion to examine ERISA's "saving" clause in the manner undertaken by the Sixth Circuit. In *McGurl v. Trucking Employees of North Jersey Welfare Fund, Inc.*, 124 F.3d 471 (3rd Cir.1997), the Third Circuit was required to determine how to coordinate benefits between two self-funded ERISA plans with competing "other insurance" provisions. ERISA's "saving" clause was not implicated in that case because there was no state statute involved. *PM Group Life Insurance Co. v. Western Growers Assurance Trust*, 953 F.2d 543 (9th Cir.1992) involved the same scenario.

Thus, the Sixth Circuit's decision in this case is not, if history is any guide, likely to have an impact on ERISA jurisprudence in other circuits, unless the state statute involved is § 3109a of the Michigan No-Fault Act. In the absence of any more wide-ranging implications, this case does not warrant consideration by this Court.

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[7] *Winstead v. Indiana Insurance Co.*, 855 F.2d 430 (7th Cir.1988), also involved § 3109a of the Michigan No-Fault Act.

CONCLUSION

For all of the foregoing reasons, Respondent respectfully requests that this Honorable Court deny the Petition.

Respectfully submitted,

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